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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,547	09/25/2000	Eugene Lawrence Podsiadlo	10316-003-999	2854
7590	03/24/2006			EXAMINER
STEVEN B. POKOTILOW				HAVAN, THU THAO
STROOCK & STROOCK & LAVAN LLP				
180 MAIDEN LANE			ART UNIT	PAPER NUMBER
NEW YORK, NY 10038				3624
DATE MAILED: 03/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/668,547	PODSIADLO, EUGENE LAWRENCE
	<b>Examiner</b> Thu Thao Havan	<b>Art Unit</b> 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 January 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 29-36 is/are allowed.

6)  Claim(s) 1-28 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

**Detailed Action**

***Response to Amendment***

Claims 1-36 are pending. This action is in response to the RCE received January 11, 2006.

***Response to Arguments***

Applicant's arguments filed November 21, 2005 have been fully considered but they are only partially persuasive.

In response to the arguments concerning the previously rejected claims the following comments are made:

A.) Applicant alleges that the prior art made of record fails to teach a hurdle rate. The examiner disagrees with applicant's representative since Van Horn teaches a rate of return that corresponds to a hurdle rate (col. 4, line 60 to col. 5, line 8; fig. 8-9). In the present application of case number 09/668,547, Applicant specifically teaches rate of return as hurdle rate by stating "After the investment product returns a pre-determined hurdle rate, or rate of return..." in page 9, line 1-2 of the specification. Thus, Van Horn teaches rate of return (hurdle rate) when he discloses each buyer must determine the maximum price at which (or below) he or she is willing to purchase the featured item. Such amount is specified in his or her binding purchase offer. That offer is guaranteed by the buyer's credit card. All offers including the various amounts at which they are submitted are collected and summarized in a database. This process enables accurate,

real-time yield management decisions, which can be used to advocate a lower per unit price.

B.) Applicant alleges that the prior art made of record fails to teach successively determining and successively updating. The examiner disagrees with applicant's representative since Van Horn discloses successively determining and successively updating (col. 15, lines 48-61). In other words, Van Horn succeeds in changing and modifying the current bids corresponds to updating the bidding information successfully.

C.) Applicant alleges that the prior art made of record fails to teach a total number of available shares. The examiner disagrees with applicant's representative since Van Horn discloses a total number of available shares (col.14, line 30 to col. 15, line 9; abstract). In other words, Van Horn teaches a supplier utilizes the invention's sales platform to sell a substantial volume of one product for the specific purpose of increasing its market share. In that, he discloses the supplier specifies a minimum sales volume so that no sales are made unless its market share objectives are met. This teaches a total number of available shares since a specific sales volume is available.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Horn et al. (US 6,631,356). Examiner maintains the rejection. Please see office action of June 18, 2004.

### ***Allowable Subject Matter***

Claims 29-36 are allowed.

The following is an examiner's statement of reasons for allowance: The prior arts of record fail to teach, singly or in combination, receiving at the server system investment product information *after* the pooled investment product has achieved a hurdle rate, the investment product information comprising: a total number of available shares, a redemption price per share corresponding to a price per share of the pooled investment product at the hurdle rate, a maximum bid price per share, and a minimum bid price per share, opening an auction for the shares of the investment product.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

TTH  
3/16/2006



HANI M. KAZIMI  
PRIMARY EXAMINER